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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-08-2006

CORAM

THE HONOURABLE MR. JUSTICE D. MURUGESAN
AND
THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT APPEAL No.63 of 2004
AND
W.A.M.P. No.75 of 2004

1) G.S.Gopalakrishnan
2) Tmt.Rajamma
3) M.Krishnappa .. Appellants

Vs.

1. Government of Tamil Nadu
   rep., by its Secretary,
   Industries Department,
   Fort St. George,
   Chennai-600 009.

2. The Collector and Land Acquisition
   Officer, Hosur,
   Dharmapuri District.

3) The Tamil Nadu Small Industries
   Development Corporation Ltd.,
   rep., by its General Manager,
   Paulwel's Road,
   Kathipara Junction,
   Chennai-16.
(R.3 impleaded as third respondent vide
 order of Court dt.14.10.2004 made in
 WAMP No.6688 of 2004) .. Respondents

This writ appeal is preferred against the order dated 6.11.2003 in W.P.No.7153 of 1997.

For Appellants : Mr.A.S.Vijayaraghavan

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For Respondents-1to3 : Mr.C.Thirumaran,
Govt. Advocate.

JUDGMENT

V. RAMASUBRAMANIAN, J.

The question as to whether a notification issued under Section 4(1) of the Land Acquisition Act, 1894 in the name of a dead person is a nullity, falls for consideration in this appeal.

2. The facts leading to this appeal are as follows:-

Five persons by name M.Narasimha Reddy, G.S.Gopalakrishnan, Tmt.Rajamma, M.Krishnappa and L.Nachiappan jointly filed a writ petition in W.P.No.7153 of 1997 praying for the issue of a Writ of Certiorari to call for the records of the first respondent relating to a notification issued under G.O.Ms.No.130, Electronics, Science and Technology (C) Department dated 2.11.1988 under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called as the 'Act') and the declaration issued under Section 6 of the Act under G.O.Ms.No.941, Industries (SIF2) dated 18.12.1989 and the award No.4 of 1991 dated 19.12.1991 of the second respondent and to quash all those proceedings in so far as they related to the land of an extent of 39 cents in Survey No.671/1, Hosur Village and Taluk. It was their contention in the writ petition that the said land of the extent of 39 cents was developed into a layout of house sites along with other lands and the layout was approved by the Director of Town and Country Planning in DTP approval 53/87-C No.2122/87 S.D.R.4 and that they had purchased plot Nos.28, 26, 27, 25, 30 and 31 respectively in the said layout.

3. By an order dated 6.11.2003, the writ petition was allowed in favour of the first and fifth petitioners viz., M.Narasimha Reddy and L.Nachiappan and the entire land acquisition proceedings as against the plots of land purchased by them were set at naught. However, the writ petition was dismissed in so far as the petitioners 2, 3 and 4 viz., G.S.Gopalakrishnan, Tmt.Rajamma and M.Krishnappa were concerned. Therefore, aggrieved by the dismissal of the writ petition, petitioners 2, 3 and 4 in the writ petition have filed the above writ appeal.

4. Mr.A.S.Vijayaraghavan, learned counsel appearing for the appellants contended that the entire acquisition proceedings were vitiated inasmuch as the notification under Section 4(1) of the Act was issued in the name of a dead person by name C.Kondappa Naidu and that therefore the original owners as well as the subsequent purchasers never had an opportunity to object to the proceedings.

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5. Admittedly Section 4 (1) notification was issued under G.O.Ms.No.130, Electronics, Science and Technology (C) Department dated 2.11.1988 and the notification contained only the name of C.Kondappa Naidu as the person interested in the lands in question. But the said C.Kondappa Naidu had died on 21.9.1987, much earlier to the notification.

6. But the actual persons who became entitled to the lands in question by virtue of a compromise decree dated 20.4.1987 passed in a civil suit O.S.No.75 of 1987 on the file of the Sub Court, Krishnagiri, developed the land into a scheme of house sites and got the layout approved in the proceedings of the Director of Town and Country Planning DTP No.53/1987. Admittedly, the appellants herein purchased the respective plots in the approved layout under sale deeds dated 26.10.1994, 28.9.1992 and 24.2.1993, by which time the Award itself had been passed on 19.12.1991. In other words, the appellants herein had purchased their respective plots much after the Award was passed on 19.12.1991 and possession taken on 13.8.1992.

7. On a consideration of the above facts, the learned Judge rejected the contention of the appellants and held that the mere fact that Section 4(1) notification was issued in the name of a dead person would not vitiate the entire proceedings inasmuch as the authorities responsible for issuing the notification might not be aware of the death of the owner. However, the learned Judge held that the failure to provide an opportunity to participate in the enquiry under Section 5-A vitiated the proceedings in so far as the writ petitioner Nos.1 and 5 were concerned, since the writ petitioner No.1 purchased the property prior to Section 4(1) notification and the writ petitioner No.5 purchased the property after Section 4(1) notification but before Section 6 declaration. No relief was granted to the writ petitioner Nos.2, 3 and 4 on the ground that they purchased the property after the award enquiry itself was completed. Hence the present appeal by writ petitioner Nos.2, 3 and 4.

8. In support of his contention that the notification issued in the name of a dead person was null and void, Mr.A.S.Vijayaraghavan, learned counsel for the appellants relied upon a judgment of this Court in MUTHUSWAMY vs. THE STATE OF TAMIL NADU (1993 (1) MLJ 217). In that case, the Government took a stand that the son-in-law of the original owner participated in the enquiry under Section 5-A of the Act and represented that the lands were given to him by an oral agreement and mutual understanding and that therefore he was served with notice. In the light of such a stand taken by the Government, it became obvious that the acquiring authority had knowledge of the death of the original owner even during the enquiry under Section 5-A of the Act. Therefore, the learned Judge rejected the stand taken by the Government and held in

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paragraph-10 of the judgment as follows:-

> "Admittedly, the respondents were aware of the fact that the original owner of the lands comprised in S.F.No.138/12B by name Ramasamy Moopanar, S/o.Muthusamy Moopanar died long before. In spite of the said factual position, it is surprising that even in the declaration under Section 6 of the Act the name of the erstwhile owner whose death was known to the respondents is found published. On this ground alone, the impugned order in so far as it seriously relates to S.F.No.138/12B deserves to be quashed. That apart, it is beyond comprehension as to how the responsible authorities discharging statutory functions under the Act were very much indifferent in making due enquiries to ascertain about the heirs of the deceased owner and were so gullible to readily accept a claim by someone that the lands have been given to him by mutual and oral understanding. The person who made such a claim claimed to be the son-in-law of the erstwhile owner. Such contentions coming from responsible statutory functionaries cannot be either justified or sustained in a Court of Law. The authorities, in my view have miserably failed to verify properly about the heirs of the deceased pattadar and the fact that such heirs have not themselves come on record cannot be a valid plea in a case of the nature involving the death of the only owner of the land or justify the issue of a notification or a declaration in the name of a dead person. The procedure adopted by the respondents cannot be approved by a Court of Law."

9. In another case, V. DEVARAJ AND OTHERS vs. STATE OF TAMIL NADU (2003 (4) CTC 134), a learned Judge of this Court held as follows:-

> "8. It is not in dispute that the notifications were issued in the name of a dead person. The original owner of the land Sami Naidu died and the authorities should have discharged the statutory functions by

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making due enquiry with the heirs of the said deceased owner. So the impugned acquisition proceedings taken by issuing notification in the name of the dead person vitiate the entire acquisition proceedings."

10. A Division Bench of this Court considered, in the case of SAVITHIRIAMMAL vs. STATE OF TAMIL NADU (2006 (3) MLJ 389), the validity of a notification issued in the name of a dead person and held that "the notification issued in the name of a dead person is a nullity and the proceedings cannot be sustained based on the said notification". But in para-3 of the said judgment, the learned Judges recorded a finding that the factum of death of the original owner was brought to the notice of the authorities even during the enquiry under Section 5-A and that despite the same, the authorities did not carry out necessary changes in the Section 6 declaration also. In view of such a finding, the Bench quashed the entire proceedings and that too at the instance of the legal heir of the deceased owner. But in the case on hand, the property has changed several hands and the appellants purchased the plots much after the award enquiry was over. It is not the case of the appellants that anyone ever brought to the notice of the acquiring authorities, the fact that the original owner was dead. Under such circumstances it is difficult to comprehend as to how the authorities can be expected to know that the original owner was dead. We are entirely in agreement with the views expressed by the learned Judges in the aforesaid cases, especially in the light of their finding in those cases that the acquiring authorities had knowledge of the death of the owner of the lands.

11. It is true that as a general principle of law, proceedings against dead persons are null and void. But this principle is not without exception. Order 22 of the Code of Civil Procedure which deals with the procedure to be followed in the case of death, marriage and insolvency of parties, carves out one such exception to the said principle under Sub-Rule (4) of Rule 4, which reads as follows:-

> "(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

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12. This Sub-Rule (4) under Rule 4 of Order 22 was introduced by way of the Code of Civil Procedure (Amendment) Act, 1976 and this amendment drew its inspiration only from an amendment already made by Calcutta, Madras, Karnataka and Orissa High Courts.

13. Thus it could be seen that even under the Code of Civil Procedure where the rigours of impleading necessary and proper parties and service of notice are more pronounced than in proceedings under special enactments, it is not made an universal rule that such proceedings against dead persons are null and void.

14. In a case arising under the Bombay Land Requisition Act, 1948, in SMT. LILA VATI BAI vs. STATE OF BOMBAY (AIR 1957 SC 521), the Constitution Bench of the Supreme Court had an occasion to consider whether an order of requisition issued under the said Act in the name of a dead person was enforceable or not. Over-ruling the contention of the petitioner that such a notice was unenforceable, the Apex Court held as follows:-

> "13. The only other contention which remains to be dealt with is that the order impugned in this case is not enforceable because it was directed against the petitioner's husband, who was dead at the date of the order, besides the other two persons indicated in it who were not concerned with the premises. In our opinion, there is no substance in this contention either. An order like the one passed under Section 6(4)(a) of the Act is not in the nature of an order in judicial proceedings between the Government on the one hand and other parties named. If the proceedings were intended by the Act in the sense of judicial or quasi-judicial proceedings between named parties, it may have been legitimately argued that an order passed against a dead man is a complete nullity. But the order proceeds on the basis that the tenant had ceased to be in occupation of the premises in October 1952, apparently by reason of the fact that he had handed over possession of the premises to the so called "lodger" or "paying guest". Admittedly the petitioner's husband died after October 1952. The occupation by the said Narottamdas Dharamsey Patel was in the nature of an unauthorised occupation. The fact that the petitioner's husband was dead on the date of the order impugned has only this effect that in so far as it mentions his name as one of the persons to be

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served under Section 13 of the Act should be erased from the order. But even so, it does not affect the enforceability of the same. Section 13 lays down the different modes of service of an order passed under the Act according as the order is of a general nature or affecting a class of persons or an individual, corporation or firm. We are here concerned with the case of an individual and the section lays down that it can be served either personally by delivering or tendering the order to him or by post or where he cannot be found, by affixing a copy of the order to some conspicuous part of the premises in which he is known to have last resided."

15. Thus, it could be seen from the law laid down by the Apex Court that a distinction was always maintained between judicial/quasi-judicial proceedings and other proceedings. In so far as the scheme of the Land Acquisition Act, 1894 is concerned, it envisages various types of notices at various stages. Section 4(1) notification is required to be gazetted followed by publication in two dailies having circulation in the locality and a local publication. The opportunity provided under Section 5-A is actually for 'persons interested' and not necessarily the land owners. This enquiry is followed by a Section 6 declaration and the Act thus provides innumerable opportunities to "persons interested" in objecting to the acquisition. The Land Acquisition Act does not limit its reach to "owners of land", but enables any person interested in the land to have a say. Moreover, the liability of the acquiring authorities to serve a notice of enquiry is also restricted only to persons whose names find a place in the revenue records. When the Act does not even make it obligatory for the acquiring authorities to conduct a roving enquiry to find out the actual owners, beyond the names reflected in the revenue records, it cannot be expected of the acquiring authorities to find out if the patta holder is alive or dead.

16. In any event, in the case on hand, the Award itself was passed on 19.12.1991 and as per the counter-affidavit filed by the respondents in the writ petition, the possession was also taken on 13.8.1992. The appellants 1 to 3 herein purchased the plots much after the Award enquiry under the sale deeds dated 26.10.1994, 28.9.1992 and 24.2.1993 respectively. Therefore, the appellants, who are subsequent purchasers, are not entitled to maintain a challenge to the acquisition proceedings in view of the law laid down by the Supreme Court in U.P.JAL NIGAM vs. KALRA PROPERTIES (P) LTD (1996 (3) SCC 124)

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17. Therefore in our considered opinion, the normal principle that proceedings against a dead person are a nullity, cannot be imported to proceedings under the Land Acquisition Act, 1894, unless it is established that the factum of death was brought to the notice of the acquiring authorities at the appropriate stage. Hence, the order of the learned Judge does not call for any interference and the writ appeal is dismissed without any order as to costs. Consequently, connected WAMP is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary,
   Government of Tamil Nadu
   Industries Department,
   Fort St. George,
   Chennai-600 009.

2. The Collector and Land Acquisition
   Officer, Hosur,
   Dharmapuri District.

3. The General Manager,
   Tamil Nadu Small Industries
   Development Corporation Ltd.,
   Paulwel's Road,
   Kathipara Junction,
   Chennai-16.

+3ccs to Mr.A.S.Vijayaraghavan, Advocate Sr 36181
+1cc to Govt. Pleader Sr 36217

AK (CO)
km/23.8.

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